



राजपत्र, हिमाचल प्रदेश (प्रसाधारण)

हिमाचल प्रदेश राज्यशासन द्वारा प्रकाशित

शिमला, शनिवार, 13 सितम्बर, 1986/22 भाद्रपद, 1908

हिमाचल प्रदेश सरकार
ELECTION DEPARTMENT
NOTIFICATION

Shimla-171002, the 17th June, 1986

No. 3-10/86-ELN.—The Election Commission of India's notification No. 82/HP-LA/10/85, dated the 29th May, 1986, corresponding to Jyaistha 8, 1908 (Saka), alongwith its Hindi version, containing the Judgment dated May 2, 1986 of the High Court of Himachal Pradesh at Shimla in Election Petition No. 10 of 1985, alongwith its Order dated 27th September, 1985 referred to therein, is hereby published for general information.

By order,

ATTAR SINGH,
Chief Electoral Officer,
Himachal Pradesh.

ELECTION COMMISSION OF INDIA

Nirvachan Sadan,
Ashok Road,
New Delhi-110001.

29th May, 1986.

Dated: _____
Jyaistha 8, 1905 (Saka).

NOTIFICATION

No. 82/HP-LA/10/85.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment dated the 2nd May, 1986 of the High Court of Himachal Pradesh at Shimla, in Election Petition No. 10 of 1985, alongwith its Order dated 27th September, 1985 referred to therein.

भारत निर्वाचन आयोग

निर्वाचन सदन,
आशोक मार्ग,
नई दिल्ली-110001.

29 मई, 1986.

तारीख: _____
ज्येष्ठ 8, 1908 (शक्).

अधिसूचना

संख्या 82/हि०प्र०-वि० स०/10/85.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में निर्वाचन आयोग 1985 की निर्वाचन अर्जी संख्या 10 में हिमाचल प्रदेश उच्च न्यायालय, शिमला के तारीख 2 मई, 1986, का निर्णय उसमें संदर्भित उस के तारीख 27 सितम्बर, 1985 के आदेश सहित एतद्द्वारा प्रकाशित करता है।

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ELECTION PETITION NO. 10 OF 1985

Sada Ram Thakur
Coram

Versus

Date of decision: May 2, 1986
Babu Ram Gautam and others

The Hon'ble Mr. Justice V.P. Gupta, J.
The Hon'ble Mr. Justice.
The Hon'ble Mr. Justice.

Whether approved for reporting ? Yes ..

For the Appellant(s)/Petitioners (s) .. Shri K.S. Patyal, Advocate.
For the Respondent (s) .. Shri M.L. Sharma, Advocate, for respondent No. 1.

V. P. GUPTA, J.

Elections to some of the constituencies of Himachal Pradesh Vidhan Sabha were held on 5-3-1985 in pursuance to a notification dated 1-2-1985 (Annexure P-I). The petitioner and respondent No. 1 as well as respondents nos. 2 to 5 filed their nomination papers form 21-Bilaspur Sadar constituency. The nomination papers of all the aforesaid persons who are parties to the present petition, were found in order. The votes were polled on 5-3-1985 and the counting was done on 6-3-1985. The results were also declared on 6-3-1985. Respondent No. 1 was declared elected having secured 11,125 votes. The petitioner secured 10757 votes while respondent No. 2 secured 545 votes, respondent No. 3 secured 80 votes, respondent No. 4 secured 66 votes and respondent No. 5 secured 178 votes respectively. The petitioner was thus defeated by a margin of 368 votes.

Feeling aggrieved from the election of respondent No. 1, the petitioner has filed this election petition under sections 80, 81, 84, 97, 100, 101 and 123 of the Representation of People Act, 1951 (hereinafter the Act) with a prayer that the election of respondent No. 1 be declared void and that he be declared as duly elected from 21-Bilaspur Sadar constituency.

The petitioner alleges that at the time of the counting of votes an application regarding booth capturing and breach of poll rules was filed to the Returning Officer, but the returning officer did not allow this application. Some votes had been cast in favour of the petitioner but they were wrongly counted in favour of respondent No. 1 and some ballot papers polled in favour of the petitioner were spoiled while several ballot papers were wrongly counted in favour of respondent No. 1. On an application for re-counting, at one stage, a re-counting was ordered but the subsequent application for re-counting was snatched from the petitioner and torn to pieces by the counting agent of respondent No. 1.

It is also alleged that respondent No. 1 indulged in corrupt practices of bribery and undue influence in so much so that the voters were threatened with dire consequences and divine displeasure. They were also offered bribes in the shape of watches and blankets at polling booth of Shira and Panjgail. Respondent No. 1 also induced respondents nos. 3 to 5 to contest the election and to spoil the votes of the petitioner or to divide the votes which the petitioner was likely to get in case respondents nos. 3 to 5 had not contested the election. Respondents nos. 3 to 5 were paid money by respondent No. 1 and were induced to stand in the election and not to withdraw from the same. Respondent No. 4 was further promised re-employment in service.

It is further alleged that respondent No. 1 obtained and procured the assistance of gazetted officers, namely, Drs. I. D. Santoshi and Sukh Ram Chauhan for the furtherance of his prospects in the election. Both these officers actively canvassed for respondent No. 1 and due to the efforts of these gazetted officers respondent No. 1 could secure more votes. Dr. Sukh Ram Chauhan was under transfer during the months of January/February 1985 but respondent No. 1 promised Dr. Chauhan to get his transfer cancelled and requested him to canvass for him (petitioner). Both Drs. Sukh Ram Chauhan and I. D. Santoshi visited various villages and canvassed the voters to cast their votes in favour of respondent No. 1. Respondent No. 1 also procured and obtained the services of Shri Lekh Ram and Shri M. R. Sharma, Youth Co-ordinator, Nehru Yuva Kender Bilaspur and both Shri Lekh Ram and Shri M. R. Sharma canvassed the voters for respondent No. 1.

Further allegation is that respondent No. 1 hired and procured tractor No. HPB-71 belonging to Sukh Ram of Village Kudi, Tehsil Sadar, District Bilaspur and tractor No. HPB-761 belonging to Shri Kanshi Ram s/o Shri Kedar of Village Khater, Tehsil Sadar, District Bilaspur for conveyance of the electors of Village Chharol Zatan and Ghagas to the polling station at Kudi and voters were carried in these tractors free of any charges on the polling day.

The election of respondent No. 1 is also challenged on the ground that the returns of expenditure filed by respondent No. 1 is not correct and about Rs. 80,000 were spent on cloth banners and hiring charges of trucks. The expenditure shown as Rs. 4615. 54 is patently incorrect and the respondent No. 1 has committed a corrupt practice under section 123(6) read with section 77 of the Act.

The petition is contested by respondent No. 1. The various allegations of the petitioner are denied in the written statement and some preliminary objections have also been raised.

Respondents Nos. 3 and 5 also filed written statements but these respondents admit the petitioner's case. No written statement was filed on behalf of respondents nos. 2 and 4 who were proceeded *ex parte*.

Replication was filed by the petitioner in which the allegations of the petition are re-asserted.

On the pleadings of the parties, the following preliminary issues were framed on 9-8-1985:—

1. Whether the provisions of section 81(3) of the Representation of People Act have not been complied with and the present petition is liable to be dismissed under section 86 of the said act? OPR-1.
2. Whether the petitioner has not set forth full particulars of the corrupt practices and a full statement of facts as alleged in para 2 of the preliminary objections raised in the written statement of respondent No. 1? OPR-1.
3. Whether the provisions of sections 117 and 86 of the Representation of People Act have not been complied with as alleged in para 3 of the preliminary objections of the written statement of respondent No. 1? OPR-1.
4. Whether true copy of the affidavit was not served upon the replying respondent and the affidavit has not been sworn in accordance with law as alleged in para 4 of the preliminary objections of the written statement of respondent No. 1? OPR-1.
5. Whether the petition is bad for absence of the allegations as have been alleged in para 5 of the preliminary objections raised in the written statement of respondent No. 1? If so, its effect. OPR-1.

These preliminary issues were decided against respondent No. 1 *vide* my order dated 27-9-1985, but respondent No. 1 was given the liberty to object to the admissibility of evidence at the time of the arguments. Thereafter the following issues on merits were framed on 27-9-1985:—

1. Whether the result of the election, in so far as it concerns respondent No. 1, has been materially affected by improper reception, refusal or rejection of any vote or the reception of any vote which is void, as alleged in paras 3 and 4 of the election petition? OPP.
2. Whether the respondent No. 1 has committed a corrupt practice under section 123(1) and (2) of the Representation of People Act as alleged in para No. 5 of the election petition? OPP.
3. Whether respondent No. 1 has committed corrupt practice as mentioned in section 123(1)(a) and as alleged in paras 6 and 7 of the election petition? OPP.
4. Whether respondent No. 1 committed a corrupt practice as mentioned in section 123(7)(a) and as alleged in paras 8 to 13 of the election petition? OPP.
5. Whether respondent No. 1 committed a corrupt practice as mentioned in section 123(5) of the Representation of People Act and as alleged in para 14 of the election petition? OPP.
6. Whether respondent No. 1 has committed a corrupt practice as mentioned in section 123(6) read with section 77 of the Representation of People Act and as alleged in para 15 of the election petition? OPP.
7. Whether petitioner is entitled to be declared duly elected as alleged in para 16 of the election petition?

8. Relief.

The parties led evidence. I have heard the learned counsel for the parties and have gone through the records of the case. My findings on the various issues are as follows.

Issue No. 1:

The learned counsel for the petitioner does not press this issue and frankly and rightly concedes that there is no evidence to prove this issue.

The only evidence is of Shri Roshan Lal (PW 15), who states that during the counting of votes, several votes polled in favour of independent candidates were counted as votes of respondent No. 1. He raised objection before the counting authorities but the objections were not heard. The petitioner also applied for recounting of the votes but the application was torn by some Congress (I) supporters. He could not give any reason as to why no application was filed regarding incorrect/improper counting of votes. He admits that re-counting was done. He also states that he did not think it necessary to file any application complaining that the application of the petitioner was torn by Congress (I) supporters.

There is in fact that no evidence regarding improper reception, refusal or rejection of any vote or the reception of any vote which was void as is alleged in paras 3 and 4 of the election petition. Hence this issue is decided against the petitioner.

Issue No. 2:

The learned counsel for the petitioner contends that respondent No. 1 distributed blankets and watches to various electors/voters and induced them to vote in his favour and to refrain from voting in favour of the petitioner. He also threatened the voters/electors with dire consequences and divine displeasure. It is contended that respondent No. 1 and his supporters collected various voters and canvassed them to vote in favour of respondent No. 1, who belonged to the ruling party and was a high class Gautam Brahmin. In case the voters refrained from voting in his favour, then they would incur the divine displeasure and would be punished by God. The voters were also threatened that if they refrained from voting in favour of respondent No. 1 then they would be implicated in criminal cases and sent to jail. My attention was drawn to the allegations made in para 5 of the petition and the evidence of S/Shri Kali Dass (PW 2), Anant Ram (PW 6), Prem Lal (PW 8) and the petitioner (PW 1).

The learned counsel for respondent No. 1 contends that the names with full particulars of the persons to whom threats were given or the watches and the blankets were distributed have not been mentioned in para 5 of the petition. It is contended that the oral evidence is insufficient, vague, indefinite, unreliable and at variance with the pleadings. Further Shri Jagan Nath (RW 4) and respondent No. 1 (RW 1) have denied the allegations.

In para 5 of the petition the petitioner has not mentioned the date on which the alleged threats were given to the voters/electors by respondent No. 1 or his supporters or the date when the blankets and watches were distributed. The petitioner's counsel, however, contends that threats were given and the watches and blankets were distributed on 5-3-1985, that is, the day of polling. Evidence has been produced to prove that the alleged threats or the distribution of blankets and watches was done on 5-3-1985 at the polling booth of Shira and Panjgain. In para 5 of the petition it is alleged that respondent No. 1 reached polling booth Shira at 11 A.M. along with S/Shri Kishori Lal, Sukh Ram and five labourers who were carrying the blankets and watches. Respondent No. 1 collected about 200 voters and addressed them that he belongs to the ruling party and was a Gautam Brahmin of high caste and that they should vote in his favour. In case they failed to vote in his favour then they would be sent to jail and God would punish them for not voting in favour of a Gautam Brahmin. At the end of the address 50 blankets and 100 watches were distributed to the voters in the presence of Shri Anant Ram s/o Shri Kasu, resident of Shira and Shri Sukh Ram s/o Tulsi Ram of village Shira.

Now S/Shri Kishori Lal, Sukh Ram and Ram Ditta have not been produced by either party. One Anant Ram s/o Kanshi Ram (PW 6) of Village Chihara is a witness, but he is not the same Anant Ram who is mentioned in para 5 of the petition. In para 5 of the petition the name of the father of Anant Ram is Kasu, resident of Village Shira. To find out as to whether Anant Ram mentioned in para 5 of the petition and the Anant Ram (PW 6) is the same person, the list of witnesses supplied by the petitioner's counsel was perused and it was found that Village Shira is distinct from Village Chihara. Anant Ram (PW 6) is mentioned at serial No. 8 in the list of witnesses dated 14-10-1985, and his village is given as Chahar. Witnesses Lekh Ram at No. 36, Baksha at No. 42, Chamaru Ram at No. 59, Anant Ram at No. 61, Sukh Ram at No. 62, Kanshi Ram at No. 63, Anant Ram at No. 64 and Chet Ram at No. 65 in the aforementioned list of witnesses filed on 14-10-1985 are of village Shira. Hence it cannot be said that there is any clerical or typographical mistake in giving the parentage or the residence of PW 6. Thus Anant Ram mentioned in para 5 of the petition is not the same Anant Ram who has appeared as PW 6.

Anant Ram (PW 6) states that he had gone to cast his vote on 5-3-1985 and was waiting in the que at about 11 A.M. when respondent No. 1 alongwith Kishori Lal, Sukh Ram came to the polling booth. Kishori Lal asked the persons standing in the que to hear him for some time. On the asking of Kishori Lal he alongwith others went to one side where about 200 persons were present. Shri Kishori Lal told the gathering that the labourers who were on muster rolls should cast their votes in favour of respondent No. 1 if they wanted to remain on the muster roll. It was further declared by Kishori Lal that if respondent No. 1 was not declared successful then the names of the persons would not remain on the muster rolls. Respondent No. 1 and Kishori Lal also asked the voters to vote for respondent No. 1 and most of the persons were distributed blankets and watches. He also got one watch.

I have already stated that the name of this witness is not mentioned in the petition. Further according to him Kishori Lal took major part in canvassing the voters in the presence of respondent No. 1. The allegations in the petition, however, do not support this statement and attribute the major part to respondent No. 1 who was accompanied by Kishori Lal.

Prem Lal (PW 8) states that he had gone to cast his vote at polling station Shira when at about 11 A.M. respondent No. 1 alongwith Kishori Lal and Sukh Ram and some others requested the voters standing in the que to hear them for some time. They went to the side where respondent No. 1 wanted them together. Respondent No. 1 told the voters that he was a Brahmin by caste and that if votes were not cast by them in his favour then it would be great calamity and God would become unhappy. 50 blankets and 100 watches had been brought by Lekh Ram, Paras Ram and Sukh Ram through labourers and respondent No. 1 asked Lekh Ram and Paras Ram to distribute blankets and watches to the voters. He as well as other voters remained in the que and did not leave the que and the watches and the blankets were distributed in the que itself.

The name of this witness is not mentioned in the petition and such type of oral evidence can be procured at any time, therefore, it is not safe to rely upon his oral statement. Besides these two witnesses the petitioner himself states that threats were given to the voters and blankets and watches were distributed. His statement is based upon the information received by him from Anant Ram, Paras Ram and Sukh Ram. None of these persons have been produced and thus the statement of the petitioner can have no value.

Respondent No. 1 (RW 1) states that he or his supporters or any other person did not distribute any blankets or watches to any person and he never asked Kishori Lal to canvass for him or to distribute the blankets or watches. He further states that he did not visit Shira polling station on 5-3-1985 and never canvassed the voters for casting their votes in his favour. He states that Shira polling station is at a distance of 4/5 km. and it is at a higher level from the road and one has to climb. He also states that he never appealed to the voters for casting their votes in his favour due to his being a Gautam Brahmin and he never threatened the voters with dire consequences.

Jagan Nath (RW 4), whose name is mentioned in para 5 of the petition states that he never distributed any blankets or watches to any person on behalf of respondent No. 1 at Shira.

In view of the evidence discussed above, I find that the petitioner has not been able to substantiate his allegations made in para 5 of the petition with respect to the alleged distribution of blankets and watches at polling station Shira or the canvassing to the voters in the name of religion or caste.

Similar type of allegations are for polling station Panjgain. It is alleged that respondent No. 1 reached Panjgain polling station at about 8 A.M. alongwith S/Shri Ram Ditta, Jagan Nath and 8 labourers, collected about 400 voters inside the booth and addressed them saying that he belongs to the ruling party and is a Gautam Brahmin by caste and if they did not vote for him then he would implicate them in criminal cases and God would punish them. At the end of the address he distributed 200 watches and 100 blankets to the voters in the presence of S/Shri Sham Singh Geshta and Kali Dass. In this para of the petition also the petitioner has not given the date but evidence produced is that it was done on 5-3-1985.

The petitioner has not produced Sham Singh Geshta and Ram Ditta to support the allegations. The names of 8 labourers have not been specifically mentioned in the para of the petition.

Kali Dass (PW 2) states that he had gone to cast his vote to polling station Panjgain where he found 5/6 labourers carrying watches and blankets. These watches and blankets were distributed to different voters by Ram Ditta and Jagan Nath, supporters of respondent No. 1. Ram Ditta is the father of respondent No. 1 and Jagan Nath is collateral of respondent No. 1. He further states that respondent No. 1 was not present at that time. The witness nowhere states that the blankets or the watches were distributed with the consent or knowledge of respondent No. 1 or his election agent. Unless such type of gifts are given/offered to the electors by the candidate or his agent or by any other person with the consent of the candidate or his agent, the same cannot be considered to be a corrupt practice of bribery as is stipulated under section 123 of the Act. Hence the statement of Kali Dass is not helpful to the petitioner. Petitioner's statement is also not helpful because he himself got the information regarding this assertion from Kali Dass, Sham Singh, Beli Ram and his polling agent Chuni Lal Deshta. These persons have not been produced. Thus the petitioner has not been able to substantiate the allegations of para 5 of the petition. Further Jagan Nath (RW 4) has denied that any watches or blankets were distributed to the voters at Panjgain. Similarly respondent No. 1 (RW 1) has denied the distribution of watches and blankets to the voters. He has also denied that he or any other person on his behalf canvassed to the voters at Panjgain to vote for him for the reason that he was a Gautam Brahmin and that in case of their not voting in his favour they would be punished by God. The respondent No. 1 also denied that he gave any threats to any voter at any polling station or threatened the voters with dire consequences to the effect that they would be sent to jail in case they did not vote for him.

In view of the evidence discussed above, I find that the petitioner has failed to prove the various allegations of para 5 of the petition. Issue No. 2 is, therefore, decided against the petitioner.

Issue No. 3:

The learned counsel for the petitioner does not press this issue and rightly conceded that there is no evidence to prove this issue.

The allegations in para 6 are that respondent No. 1 induced Shri Narinder Kumar (respondent No. 3) to stand and not to withdraw from the election with a view that urban votes which could be obtained by the petitioner were divided. A sum of Rs. 2000/- was paid by respondent No. 1 to respondent No. 3 on 7-2-1985 at 1 P.M. at the shop of Shri Som Nath Halwai, Main

Market, Bilaspur in the presence of Babu Ram and Paras Ram Noga and for this reason respondent No. 3 did not withdraw from the election and thus spoiled about 500 votes of the petitioner.

The petitioner (PW 1) has admitted that Som Nath is the father of respondent No. 3, who has filed a written statement admitting the allegations of the petition. Respondent No. 3, however, has not appeared as a witness to prove the allegations. S/Shri Babu Ram and Paras Ram have not been produced as witnesses. The petitioner (PW 1) states that he was informed by Paras Ram and Babu Ram that respondent No. 1 had gone to the shop of respondent No. 3 to persuade him to contest the election and he was informed that respondent No. 3 was paid Rs. 2000/- for this purpose. Respondent No. 1 (RW 1) has denied the allegations and states that he did not pay any money to respondent No. 3 and never visited the shop of respondent No. 3. This statement of respondent No. 1 (RW 1) is not challenged.

Thus there is no reliable evidence to prove that respondent No. 1 had paid any amount to respondent No. 3 to persuade him to stand and not to withdraw from the election and these allegations of para 6 of the petition are not proved.

In para 7 of the petition, it is alleged that respondent No. 1 induced Shri Parkash Chand (Respondent No. 4) to stand in the election and not to withdraw his candidature with an object to divide and spoil the votes of the petitioner in Balh-Chorani area. Respondent No. 4 resigned from police service. Respondent No. 1 had promised him re-employment with the benefit of his previous service. This promise was made at the residence of respondent No. 4 in Sector No. 1 Dayara, New Township Bilaspur on 8-2-1985 at 9 A.M. in the presence of Daulat Ram Sharma, Advocate and Parkash Chand of Village Rahian. Respondent No. 4 thus contested the election and spoiled about 1000 votes of the petitioner.

Respondent No. 4 is *ex parte*. Respondent No. 4 and S/Shri Daulat Ram and Parkash Chand have not been produced to prove these allegations. The petitioner (PW 1) states that Daulat Ram Sharma had informed him about the meeting of respondent No. 1 with respondent No. 4 and that respondent No. 1 had persuaded respondent No. 4 to contest the election. Respondent No. 1 had paid Rs. 2000/- to respondent No. 4 and if respondent No. 4 happened to secure more votes then in that case further amount would be paid to respondent No. 4.

Respondent No. 1 (RW 1) has denied these allegations and states that he did not give any money to respondent No. 4 nor promised him to pay any money. Respondent No. 4 retired from the election after the last date fixed for withdrawal and respondent No. 4 was earliest President of Bhartiya Janata Party. This statement has not been challenged in cross-examination. Hence the allegations made in para 7 of the petition are not proved.

In view of the above discussion, issue No. 3 is decided against the petitioner.

Issue No. 6:

The learned counsel for the petitioner contends that the respondent No. 1 spent Rs. 30,000/- for 60 cloth banners (which carried his photograph alongwith the photographs of the Prime Minister Shri Rajeev Gandhi and the Chief Minister Shri Vir Bhadra Singh), because each banner costed Rs. 500/-. These banners were used by respondent No. 1 during the election. He also contends that respondent No. 1 hired about 100 trucks from various truck operators on 3-3-1985 at Rs. 500/- per day and thus spent about Rs. 50,000/-. A total amount of Rs. 80,000/- was spent on these two items, which exceeded the maximum limit of Rs. 20,000/-. In the return Ex.P-7, the petitioner has only shown an expenditure of Rs. 4616.54 P. but has not mentioned the expenditure of Rs. 80,000/- and the return on the face of it is false. In view of section 77 read with section 123 (6) of the Act, the election of respondent No. 1 is liable to be set aside on this ground.

The learned counsel for respondent No. 1 contends that respondent No. 1 did not spend any amount for the banners or for hiring any trucks on 3-3-1985. The expenditure of Rs. 80,000/- was in fact never incurred by respondent No. 1 and a correct statement of account (Ex. P-3) has been filed.

The petitioner (PW 1) states that 60 banners were displayed at various places by respondent No. 1 with a request to vote for him and cost of each banner was about Rs. 500/-. Similarly about 100 vehicles were engaged and were working on 3-3-1985 when the Prime Minister Shri Rajeev Gandhi came to Bilaspur to address a public meeting. The trucks were engaged by respondent No. 1 to carry the public to attend the meeting. Each truck was hired at Rs. 500/-.

Respondent No. 1 (RW 1) has admitted the use of the banners and the plying of the trucks on 3-3-1985 when Shri Rajeev Gandhi, Prime Minister of India, visited Bilaspur. He, however, states that the banners were used by Congress (I) party and he did not spend anything from his pocket for these banners. The Prime Minister of India also visited his constituency on 3-3-1985 in connection with his election and people came to hear the Prime Minister of their own accord. He never brought any person. He filed a correct statement of his expenditure and no trucks were hired by him during the election. He admits that the banners supplied by the party had his photograph alongwith the photographs of S/Shri Rajeev Gandhi and Vir Bhadra Singh and the banners were of the size of 5' to 6' X 1½'. The banners were sent by Congress (I) party and the number might be about 60 to 70. Exact cost of the banners could not be given by him and he could not deny that the cost of each banner was about Rs. 600/- or 700/-. He denied the suggestion that he got these banners prepared at his own cost.

It is not proved that respondent No. 1 got the banners prepared at his own cost and/or hired any truck by paying money from his own pocket during the visit of the Prime Minister of India. If the respondent No. 1 had spent any amount for the preparation of the banners or the hiring of the trucks then the petitioner could produce such evidence, such as records of the truck operators etc. The learned counsel for the petitioner contends that the respondent No. 1 should have produced the evidence regarding the expenditure incurred by the party, but this contention cannot be accepted because the onus of the issue is upon the petitioner. Respondent No. 1 states that banners were used during his election but these banners were supplied by the Congress (I) party. He has denied that he spent any amount from his own pocket for carrying the public to the venue of the public meeting addressed by the Prime Minister of India. In these circumstances, I hold that the petitioner has failed to prove that respondent No. 1 spent any amount for the preparation of the banners or for hiring of vehicles to bring the public for attending the meeting during the visit of the Prime Minister.

Under section 123(6) of the Act the incurring or authorising of the expenditure in contravention of section 77 of the Act is a corrupt practice for the purposes of the Act. The relevant portion of section 77 reads as follows:—

“77. Account of election expenses and maximum thereof.—(1) x x x x x x x x x x
x x x x x x x x x x

Explanation 1.—Notwithstanding any judgment, order or decision of any court to the contrary, any expenditure incurred or authorized in connection with the election of a candidate by a political party or by any other association or body of persons or by any individual (other than the candidate or his election agent) shall not be deemed to be, and shall not ever be deemed to have been, expenditure in connection with the election incurred or authorized by the candidate or by his election agent for the purposes of this sub-section:

Provided that nothing contained in this Explanation shall affect—

(a) any judgment, order or decision of the Supreme Court whereby the election of

- a candidate to the House of the People or to the Legislative Assembly of a State has been declared void or set aside before the commencement of the Representation of the People (Amendment) Ordinance, 1974 (13 of 1974);
- (b) any judgment, order or decision of a High Court whereby the election of any such candidate has been declared void or set aside before the commencement of the said Ordinance if no appeal has been preferred to the Supreme Court against such judgment, order or decision of the High Court before such commencement and the period of limitation for filing such appeal has expired before such commencement."

Thus according to explanation (1) to section 77 of the Act, if any expenditure is incurred or authorised in connection with the election of a candidate by a political party, then such an expenditure shall be deemed to be an expenditure in connection with the election incurred or authorised by the candidate. In view of the above discussion, I hold that the petitioner has failed to prove the allegations of para 15 of the petition. Issue No. 6 is thus decided against the petitioner.

Issue No. 4:

The learned counsel for the petitioner contends that the respondent No. 1 obtained and procured the assistance of three gazetted officers, namely, Dr. I. D. Santoshi, Dr. Sukh Ram Chauhan and Shri Lekh Ram Bhardwaj, for the furtherance of his prospects of the election. He frankly admits that although Shri M. R. Sharma, Youth Co-ordinator Nehru Yuva Kender Bilaspur is alleged to have rendered assistance to respondent No. 1, but it is not proved that Shri M. R. Sharma was a gazetted officer at the relevant time. It is contended that respondent No. 1 has committed a corrupt practice under section 123(7)(a) of the Act. The learned counsel for respondent No. 1 contends that the petitioner has failed to prove the allegations and the evidence does not prove that respondent No. 1 obtained or procured the assistance of any government officer or gazetted officer for furtherance of the prospects of his election.

The evidence was perused in the court in the presence of the learned counsel for the parties.

Section 123 (7) of the Act reads as follows:—

"123. *Corrupt Practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) x x x x x x

(2) x x x x x x

(3) x x x x x x

(4) x x x x x x

(5) x x x x x x

(6) x x x x x x

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the government and belonging to any of the following classes, namely:—

(a) gazetted officers;

x x x x x x x x x x

The law relating to elections is now well settled and to appreciate the evidence it is better to quote some observations from the Supreme Court judgments.

In AIR 1985 S.C. 89, *Surinder Singh vs. Hardial Singh and others*, after considering the various judgments, it has been observed in para 23 as follows:—

"It is thus clear beyond any doubt that for over 20 years the position has been uniformly accepted that charges of corrupt practice are to be equated with criminal charges

and proof thereof would be not preponderance of probabilities as in civil action but proof beyond reasonable doubt as in criminal trials. We are bound by the decision of the larger Bench in Mohan Singh's case (AIR 1964 S. C. 1366) (supra) as also by decisions of co-ordinate benches and do not feel inclined to take a different view."

In AIR 1986 S.C. 3, *Ram Singh and others Vs. Col. Ram Singh*, it has been observed in para 3 of the judgment that:

"If two views are reasonably possible one in favour of the elected candidate and the other against him courts should not interfere with the expensive electoral process and instead of setting at naught the election of the winning candidate should uphold his election giving him benefit of the doubt."

In para 16 it is again observed:—

"It is well settled that the corrupt practice must be committed by the candidate or his polling agent or by others with the implicit or explicit consent of the candidate or his polling agent. Where, however, the supporters of a candidate indulge in a corrupt practice on their own without having been authorised by the candidate or his polling agent, the election of the returned candidate cannot be voided."

In para 117, it is observed that :

"The standard of proof required in an election matter where the allegations of corrupt practice have to be proved beyond reasonable doubt almost just like a criminal case."

In (1986) 2 S.C.C. 121, *Ram Chand Bhatia Vs. Shri Hardyal*, it is again observed in para 25 of the judgment that :

"Election proceedings involving charge of corrupt practice are of quasi-criminal nature and it was for the election petitioner to prove beyond reasonable doubt all the necessary facts which would establish the allegation of corrupt practices that have been alleged in the election petition. It will be unsafe to accept the oral evidence on its face value without seeking for assurance from some other circumstances or unimpeachable document."

In AIR 1977 S.C. 208, *M. Narayana Rao Vs. Venkata Reddy*, it is held in para 19 as follows:—

- (1) That the charge of commission of corrupt practice has to be proved and established beyond doubt like a criminal charge or a quasi-criminal charge but not exactly in the manner of establishment of the guilt in a criminal prosecution giving the liberty to the accused to keep mum. The charge has to be proved on appraisal of the evidence adduced by both sides especially by the election petitioner.
- (2) That the election held and results declared on the choice of the voters should not be lightly interfered with or set aside by a court of law. After all, in the holding of a fresh election are involved numerous botherations, tremendous expenses, loss of public time and money and the uncertainty of the public representation from a particular Constituency.
- (3) A charge of corrupt practice is easy to level but difficult to prove. If it is sought to be proved only or mainly by oral evidence without there being contemporaneous

documents to support it, court should be very careful in scrutinising the oral evidence and should not lightly accept it unless the evidence is credible, trustworthy, natural and showing beyond doubt the commission of corrupt practice, as alleged.

- (4) It must always be borne in mind that the consequences of setting aside of an election on the ground of corrupt practice are very serious for the candidate concerned as well as others involved in it. A Court, therefore, should reach its conclusion with care and caution taking into consideration the broad probabilities, the natural conduct of the persons involved and the special situation in which a corrupt practice is alleged to have been committed."

In AIR 1975 S.C. 290, *Rahim Khan Vs. Khurshid Ahmed*, it is held in para 9 as follows:—

- "9. However, we have to remember another factor. An election once held is not to be treated in a lighthearted manner and defeated candidates or disgruntled electors should not get way with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically sacred public act, not of one person or one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded."

In para 9 of the petition it is alleged that Dr. I. D. Santoshi is a close relative of respondent No. 1 and was enjoying leave with effect from 29-1-1985 on account of second half vacations in the Medical College Shimla. During this period he actively canvassed for respondent No. 1 and asked the voters to vote and support respondent No. 1. Respondent No. 1 and Dr. I. D. Santoshi visited Kali Dass of village Panjgain on 12-2-1985 at about 8 A.M. and all these three persons visited almost every house of village Panjgain and contacted about 700 voters. Dr. Santoshi requested the voters to cast their votes in favour of respondent No. 1. Similarly on 13-2-1985 Dr. Santoshi with respondent No. 1 and Shri Roshan Lal Tailor master visited the main Market Bilaspur and requested the voters of Bilaspur town to vote in favour of respondent No. 1. Shri Mirza Husain Beg objected to the canvassing of Dr. Santoshi, but Dr. Santoshi replied that respondent No. 1 was his relation. It is alleged that Dr. Santoshi is married at Bilaspur.

The petitioner (PW1) states that he was informed about this canvassing in Village Panjgain on 12-2-1985 by S/Shri Kali Dass, Beli Ram and Sham Singh and regarding canvassing at Bilaspur on 13-2-1985 by S/Shri Roshan Lal, Bal Krishan and Madan Lal.

Now, Beli Ram, Sham Singh and Madan Lal have not been produced and the petitioner (PW 1) himself did not see Dr. Santoshi canvassing any voter.

Kali Dass (PW 2), a resident of Panjgain and a distant relation of Dr. Santoshi, states that Dr. Santoshi requested him to help and vote for respondent No. 1, upon which he joined for canvassing in favour of respondent No. 1. They met villagers and canvassed them to vote for respondent No. 1. This witness admits that he did not work for any candidate in the elections and that he himself was defeated in the Panchayat elections. His oral statement does not inspire confidence because it was not necessary to seek the help and assistance of Dr. Santoshi when both the witness and respondent No. 1 belong to village Panjgain.

Bal Krishan (PW 7) a resident of village Mandi Manwa, states that he had gone to the shop of Roshan Lal tailor master in Bilaspur town on 13-2-1985 where he met respondent No. 1 along with Dr. I.D. Santoshi. Dr. Santoshi requested him to vote for respondent No. 1 and help respondent No. 1 in the elections. He along with Roshan Lal, Dr. Santoshi and respondent No. 1 went to different shops and persons in Bilaspur town for canvassing. One Husain Beg asked Dr. Santoshi not to take part to canvassing, but Dr. Santoshi told him that respondent No. 1 was his relation. This witness states that he met Dr. Santoshi for the first time on that date and that he does not know if Roshan Lal tailor master is a B.J.P. worker. He states that he canvassed Pritam Lal, Prakash, Sukh Dev, Gita Ram and many others.

This witness was not interested in respondent No. 1, Dr. Santoshi or Roshan Lal and is not a worker of any political party. It is not possible to believe his oral statement specially when he is a resident of a different place and is not a voter of the constituency.

Roshan Lal (PW 15) who runs a tailor shop in Bilaspur town, states that Dr. Santoshi and respondent No. 1 with two more persons came to his shop on 13-2-1985 and requested him to vote for Congress (I) candidate. Upon the request of these persons he went to some shop-keepers of the bazar to request them to vote for respondent No. 1 and he remained with them for about 15/20 minutes. He admits that he was a counting agent for respondent No. 5. He is unable to name any person whom he approached for casting of votes, and admits that he never accompanied Dr. Santoshi or respondent No. 1 except on 13-2-1985.

If this witness was a counting agent for Bachan Singh respondent No. 5, then it cannot be believed that he would canvas for respondent No. 1. The oral statement of this witness cannot be accepted.

Vinod Bhargav (PW 16) states that Dr. I.D. Santoshi was on winter vacation from 30-1-1985 to 14-3-1985 and did not attend the Medical College, Shimla. His statement cannot prove that Dr. Santoshi had gone to his village Panjgain to render help to respondent No. 1.

Respondent No. 1 (RW 1) has denied the various allegations and states that Dr. I.D. Santoshi never canvassed for him during the elections. Further S/Shri Bal Krishan, Roshan Lal and Kali Dass were never approached by him during the elections and he never visited Dr. Santoshi and requested him for help in the elections.

Dr. I.D. Santoshi (RW 3) also denies the allegations and states that he never approached Kali Dass, Roshan Lal and Bal Krishan or any other person and never asked them to vote for respondent No. 1 in the election. He never approached any person to help respondent No. 1 and during vacation period he stayed at Panjgain only for one day and for about 6/7 days at Bilaspur. The remaining time was spent by him at Shimla. There is no reason to disbelieve his statement.

Jagan Nath (RW 4) also states that he never supported or canvassed for respondent No. 1 during the elections.

In view of the above discussion I find that the allegations regarding Dr. I. D. Santoshi have not been proved.

In para 10 and 11 of the petition it is alleged that respondent No. 1 obtained the assistance of Dr. Sukh Ram Chauhan a gazetted officer for canvassing the voters and Dr. Sukh Ram Chauhan was under transfer during January/February 1985. Respondent No. 1 had promised Dr. Chauhan

to get his transfer cancelled and in lieu of that Dr. Chauhan agreed to canvas for respondent No. 1 in the town and accordingly both Dr. Chauhan and respondent No. 1 visited about 200 families in the town and asked the voters to vote for respondent No. 1 on 17-2-1985. They met the voters of sector No. 1 from 8 A.M. to 6 p.m. along with Dr. Jaswant Singh of Bilaspur town. It is alleged that Dr. Sukh Ram Chauhan belongs to Village Gasaur and has influence in the adjoining area of Makari polling station of Bilaspur Sadar constituency. Both Dr. Chauhan and respondent No. 1 visited village Thoru and Barog on 3-4-1985 at about 8 A.M. and requested the voters in the presence of Lekh Ram of Village Barog to vote for respondent No. 1.

The learned counsel contends that by a typographical mistake date is given as 3-4-1985 instead of 3-3-1985. I find that the contention of the learned counsel is correct because polling of votes was done on 5-3-1985. Hence the date will be taken as 3-3-1985 instead of 3-4-1985.

The petitioner (PW 1) has no personal knowledge and he states that this fact was disclosed to him by Lekh Ram, Paras Ram, Jagan Nath. Regarding Dr. Sukh Ram going to Dayara sector in Main Market of Bilaspur, he was informed by Durga Ram and Babu Ram. Now, Paras Ram, Durga Ram and Babu Ram have not been produced. Lekh Ram (RW 5) states that Dr. Sukh Ram along with respondent No. 1 came to his house on 3-3-1985 and requested him to vote for respondent No. 1. He saw Dr. Sukh Ram asking villagers to vote for respondent No. 1. This witness belongs to a different community than that of Dr. Sukh Ram and had never accompanied Dr. Sukh Ram for any purpose earlier or afterwards. He is a resident of Tehsil Sadar, District Bilaspur. The oral statement of this witness is not sufficient to prove the allegation.

Jaswant Singh (PW 10) does not mention the name of Dr. Sukh Ram and his statement is of no assistance to the petitioner.

Sant Ram (PW 12) states that Dr. Sukh Ram Chauhan visited village Makari along with Jagan Nath and respondent No. 1 and asked the villagers to vote for respondent No. 1. He went with the aforesaid persons to village Sanauri and Barog where Dr. Sukh Ram requested the voters to vote for respondent No. 1. This witness is a Congress (I) supporter. He does not remember if he was a polling agent for the petitioner or any of the candidates, during the 1985 elections. He has avoided the reply by stating that he does not remember if he was a polling agent for the petitioner or he acted as a polling agent for any of the candidates in March, 1985 elections. If his memory is weak to that extent it is not possible to believe him regarding incident of 3-3-1985 which did not relate to him. His name is also not mentioned in paras 10 and 11 of the petition.

Sarnu (PW 13) states that on 17-2-1985 he had gone to the Main Market Bilaspur for purchase of some articles. Dr. Sukh Ram along with respondent No. 1 and Durga were canvassing for respondent No. 1. This witness is illiterate and was unable to give the date of the birth of his son or his own marriage. He could not be positive for 17-2-1985 and it is not possible to believe his oral statement.

Chint Ram (PW 14) is a vegetable seller who had come to Main Market Bilaspur for purchase of vegetables. He states that Dr. Sukh Ram and Durga Pradhan were canvassing in Bilaspur on 17-2-1985. This witness is unable to give the date and month of his birth or marriage. It is not believable that he could remember the date 17-2-1985 about canvassing.

Respondent No. 1 (RW 1) states that Dr. Sukh Ram Chauhan never canvassed for him during the election and he never visited any voter with Dr. Sukh Ram Chauhan and never approached the witnesses Sant Ram, Sarnu, Chint Ram, Lekh Ram, Paras Ram, Durga and Kali Dass with Dr. Sukh Ram Chauhan.

There is no positive evidence about obtaining or procuring the assistance of Dr. Sukh Ram Chauhan by respondent No. 1 for the furtherance of the prospects of his election. The oral statements of the witnesses are not sufficient to prove the allegations of paras 10 and 11 of the petition.

The names of the persons approached by Dr. Sukh Ram Chauhan are also not mentioned in paras 10 and 11 of the petition. Durga Ram who allegedly accompanied Dr. Sukh Ram was not produced. Shri K. Lal (RW 2) states that he did not receive any complaint regarding the working of Dr. Sukh Ram for respondent No. 1.

If Dr. Sukh Ram Chauhan had been working and canvassing for respondent No. 1, then the petitioner, his agents or polling agents or election agents could very easily complain to the appropriate authorities but nothing was done. As already stated, the oral evidence is not sufficient to prove the allegations against Dr. Sukh Ram Chauhan.

The learned counsel for the petitioner contends that the allegations of para 11 of the petition against Dr. Sukh Ram Chauhan have not been denied specifically in the written statement and the same should be taken to have been admitted in view of the provisions of order 8, rule 5, C.P.C. read with section 58 of the Evidence Act. It is contended that a consolidated reply to paras 10 and 11 of the petition was filed by respondent No. 1.

The learned counsel for respondent No. 1 contends that the denial is specific because the first portion of the para of the written statement states that "the allegations in paras 10 and 11 of the petition are incorrect and denied." In the last three lines it is again stated that "neither these public servants assisted the replying respondent nor they had any consent of the replying respondent at any point of time."

After considering the contentions of the learned counsel for the parties I am of the view that the allegations of both paras 10 and 11 of the petition have been denied by respondent No. 1. Further a specific issue No. 4 on merits was framed on 27-9-1985 on the basis of the allegations and the parties had the knowledge of the controversy, i.e., allegations of paras 10 and 11 pertaining to Dr. Sukh Ram had not been admitted by respondent No. 1. The parties then produced evidence on this issue. They had the knowledge that the allegations of paras 10 and 11 of the petition were to be proved by the petitioner. In these circumstances, the contention of the learned counsel for the petitioner that the allegations of para 11 of the petition should be taken to have been admitted by respondent No. 1, cannot be accepted. The petitioner has failed to prove the allegations of paras 10 and 11 of the petition.

In para 13 of the petition, the petitioner alleges that respondent No. 1 obtained the assistance of Shri Lekh Ram Bhardwaj Headmaster Government High School Behal for the furtherance of his election. Lekh Ram belongs to village Perwin of Bilaspur constituency and he visited his village on 24-2-1985 at 10 A.M. along with respondent No. 1 and introduced respondent No. 1 to every voter in the presence of Jeet Ram of village Kandror and Achhar Singh of village Perwin. Respondent No. 1 told the voters that they should vote for him and that Lekh Ram had specially come for the purpose.

Shri Achhar Singh has not been produced.

Jeet Ram (PW 4) states that he was standing at a shop near bridge at Kandror when respondent No. 1 along with Lekh Ram came in a car and requested him to accompany them to village Perwin for canvassing. On way Roop Lal also joined them in the car. They went to Achhar Singh and Ram Parkash who joined them for canvassing. All of them went to various villagers of village Perwin and canvassed them to vote in favour of respondent No. 1.

This witness is a B.J.P. worker and is a distant relation of Lekh Ram. He admits that this was his only visit to village Perwin which is about 1 km. from Kandror bridge.

Ram Parkash (PW 3) states that respondent No. 1 along with Lekh Ram, Jeet Ram (PW 4) and Roop Lal came to shop of Achhar Singh and requested him to vote for respondent No. 1. He admits that he did no canvassing personally and knew Lekh Ram as a Headmaster only.

The petitioner (PW 1) only states that he was informed about canvassing by Lekh Ram, by S/Shri Jeet Ram, Roop Lal and Parkash Chand. Roop Lal and Parkash Chand have not been produced.

Respondent No. 1 (RW 1) states that Lekh Ram did not do any canvassing for him and that he never got extension for Lekh Ram. Lekh Ram (RW 5) also states that he never worked for respondent No. 1 and never met Jeet Ram, Ram Parkash and Achhar Singh on 24-2-1985. He was given extension of two years in service on the ground of his being a freedom fighter and not due to the efforts of respondent No. 1.

The petitioner has not named any voter who was canvassed by Lekh Ram and the persons mentioned in the petition, except Jeet Ram, have not been produced. The allegations in the petition are vague and such like allegations can be made against any person. The oral evidence of the petitioner cannot be believed in view of the clear denial by Lekh Ram (RW 5) and respondent No. 1. The petitioner has thus failed to prove by cogent evidence that respondent No. 1 had obtained or procured the assistance of Lekh Ram for the furtherance of the prospects of his election.

In view of the above discussion, this issue is decided against the petitioner.

Issue No. 5 :

The learned counsel for the petitioner contends that respondent No. 1 had hired and procured tractor No. HPB-71 belonging to Sukh Ram of village Kudi and tractor No. HPB-761 belonging to Kanshi Ram of village Khater for the free conveyance of electors of village Chharol Jattan and Ghagas to polling station Kudi. The voters were carried for casting their votes from their houses to the polling station and back free of charges.

The learned counsel for respondent No. 1 contends that these allegations are not proved.

In para 14 of the petition, it is alleged that tractors belonging to Sukh Ram and Kanshi Ram were used by respondent No. 1 for carrying about 100 voters from their houses free of cost to Kudi polling station on 5-2-1985 at about 9 A.M. The names of ten voters who had travelled in these tractors free of cost are mentioned. The date 5-2-1985 is mentioned due to a typographical mistake because the polling date was 5-3-1985. Hence the date would be treated as 5-3-1985 and not 5-2-1985.

Section 123 (5) of the Act reads as follows :—

“123. *Corrupt Practices.*—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1)	x	x	x	x	x	x
(2)	x	x	x	x	x	x
(3)	x	x	x	x	x	x
(4)	x	x	x	x	x	x

- (5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place

fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression 'vehicle' means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

x x x x x

The petitioner has not produced any voter out of the ten persons mentioned in the petition. The non-production of these persons is a circumstance against the petitioner and it can be presumed that these persons, if produced, would not have supported the petitioner.

Karam Singh (PW 9) states that he saw one tractor with Congress (I) flag belonging to Kanshi Ram of Barmana carrying voters from polling booth Beri to their respective places. S/Shri Hari Ram, Sukhu and Piar Singh supporters of respondent No.1 were sitting in the tractor. On the asking of S/Shri Hari Ram and others he sat in the tractor. No fare was charged from him or from the persons sitting in the tractor. Some persons from Chharol Jattan who were to cast their votes at polling station Kudi, also boarded the tractor. After reaching Ghagas he saw another tractor belonging to Sukh Ram with a Congress (I) flag carrying voters to polling station Kudi. He admits that he did not know as to who had asked Kanshi Ram and Sukh Ram to carry the voters to the polling station and that S/Shri Daulat Ram, Chet Ram who were sitting in the tractor were asking the voters to sit in the tractor. The witness was unable to give the names of the persons who were sitting in the tractor.

The hiring or procuring of the vehicle should be by a candidate or his agent or by any other person with the consent of a candidate or his election agent. The witness has nowhere stated that the tractors belonging to Sukh Ram and Kanshi Ram were hired or procured by respondent No. 1 or his agent or by any other person with the consent of respondent No.1 or his election agent. Thus it is not proved that the tractors were used for the free carriage of voters by the candidate or his agent or by any other person with the consent of respondent No. 1 or his election agent.

The witness has not been able to give the name of any voter who was sitting in the tractor. He himself had already cast his vote at polling station Beri and he was returning to his house. He is a chance witness and no reliance can be placed upon his oral statement.

Chet Ram (PW 11) states that he along with other voters were called from their houses by the driver of the tractor and were asked to sit in the tractor so that they could go to the polling station to cast their vote. He along with other persons boarded the tractor and were told by the driver that the tractor had been sent by respondent No. 1 and Kanshi Ram.

The witness does not know the name of the driver and has also not been able to give the registration number of the tractor. According to him the tractor came at 11/11.30 A.M. and that there were 50/60 persons in the tractor but he could give the names of Karam Singh (PW 9) and Balak Ram only. The witness is a resident of village Chharol Jattan while Karam Singh is a resident of Beri. The witness could not give the name of any person of Chharol Jattan even. The witness does not state that the tractor was hired or procured by respondent No. 1 or his agent or by any other person with the consent of respondent No. 1 or his election agent. The oral evidence of this witness is of no help to the petitioner.

The petitioner (PW 1) states that he saw some tractors having Congress (I) flags carrying voters to Kudi polling station on 5-3-1985 when he was coming to Ghagas on his way to Barmana

from Bilaspur. He was informed by voters that they had been brought to vote for respondent No. 1 in two tractors. The tractors were not hired in his presence and no payment for hiring was made in his presence. He has not named the voters whom he saw in the tractor. His statement is vague and is based upon the knowledge derived by him from other voters.

Respondent No. 1 (RW 1) states that he or his supporters did not carry any voter on 5-3-1985 either to Kudi polling station or to any other polling station on any tractor and no tractor was used for carrying of voters. He has denied the hiring of tractor No. HPB-71 belonging to Sukh Ram and HPB-761 belonging to Kanshi Ram and has also denied that Kanshi Ram was his polling agent.

The evidence discussed above does not prove the hiring or procuring of the two tractors for the free conveyance of the voters as has been alleged in the petition. Even if any tractor is proved to have been used still it is not proved that they were hired or procured by respondent No. 1 or his agent or by any other person with the consent of respondent No. 1 or his election agent. In these circumstances, the allegations of para No. 14 of the petition are not proved and accordingly issue No. 5 is decided against the petitioner.

Issue No. 7 :

In view of the findings on issues nos. 1 to 6, this issue is decided against the petitioner.

Issue No. 8 :

As a result of the findings on the various issues, I dismiss this election petition. The parties are, however, left to bear their own costs. It is directed that the substance of this decision be communicated to the Election Commission and the Speaker of Himachal Pradesh State Legislative Assembly forthwith. An authenticated copy of the decision be also sent to the Election Commission at the earliest.

May 2, 1986

Sd/-
V. P. GUPTA, J.

Attested.

Seal

Sd/-
Superintendent (J),
High Court of H. P., Shimla.

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

ELECTION PETITION NO. 10 OF 1985

Date of decision : September 27, 1985

Shri Sada Ram Thakur

Versus

Babu Ram Gautam and others

Coram :

The Honble Mr. Justice

V. P. Gupta, J.

For the Appellant (s)/Petitioner (s) : Shri K.S. Patyal, Advocate.

For the Respondent (s) : M/s M. L. Sharma and Dev Raj, Advocates.

V. P. GUPTA, J.

The petitioner has challenged the election of respondent No. 1 to 21-Bilaspur Sadar Constituency of Himachal Pradesh Vidhan Sabha on various grounds as alleged in the election petition.

Notices of the petition were issued to the respondents and respondent No. 1 in his written statement contested the petition on merits. He also raised some preliminary objections.

Upon the pleadings of the parties, to deal with the preliminary objections, the following preliminary issues were framed on 9-8-1985:—

1. Whether the provisions of section 81 (3) of the Representation of People Act have not been complied with and the present petition is liable to be dismissed under section 86 of the said Act? OPR-1.
2. Whether the petitioner has not set forth full particulars of the corrupt practices and a full statement of facts as alleged in para 2 of the preliminary objections raised in the written statement of respondent No. 1? OPR-1.
3. Whether the provisions of section 117 and 86 of the Representation of People Act have not been complied with as alleged in para 3 of the preliminary objections of the written statement of respondent No. 1? OPR-1.
4. Whether true copy of the affidavit was not served upon the replying respondent and the affidavit has not been sworn in accordance with law as alleged in para 4 of the preliminary objections of the written statement of respondent No. 1? OPR-1.
5. Whether the petition is bad for absence of the allegations as have been alleged in para 5 of the preliminary objections raised in the written statement of respondent No. 1? If so, its effect. OPR-1.

The parties were given opportunity to lead evidence. The respondent No. 1 produced a copy of the election petition with its annexures (Ex. R-1 to R-9) which were served upon him. The petitioner did not lead any evidence.

I have heard the learned counsel for the parties.

Issue No. 1 :

Mr. M.L. Sharma, the learned counsel for respondent No. 1, contends that in the copy Ex. R-1, supplied to the respondent, the name of village of Rakesh Singh in para 14 if given as Bali while in the original petition it is Dali. He further contends that in the challan, copy of which is Ex. R-6, some words are not legible in column No. 6.

Shri Patyal, the learned counsel for the petitioner, contends that the name of the village of Rakesh Singh in para 14 of the petition is Dali, but due to a typographical mistake it has been shown as Bali in Ex. R-1 and that the copy of the challan Ex. R-6 is a photo-stat copy of the original challan appended with the petition.

After looking into the records and considering the contentions of the learned counsel for the parties, I find that in para 14 there is only a typographical mistake in giving the name of the village as Bali instead of Dali and the challan Ex. R-6 is a photo-stat copy of the original challan appended with the petition. The facts that the words are not legible in column No. 6 of Ex. R-6 are

correct. But these facts cannot be said to be enough for dismissing the petition, because the copy of the election petition as well as the annexures attached with the election petition have been duly supplied to the respondent No. 1 and the same are attested by the petitioner under his own signatures mentioning that the same are true copies.

In view of the aforesaid circumstances, I do not find any force in the contention of the learned counsel for respondent No. 1. Issue No. 1 is accordingly decided against respondent No. 1.

Issue No. 3 :

This issue is not pressed by the learned counsel for respondent No. 1. The challan Annexure PE appended to the petition and a photo-stat copy of which is Ex. R-6, reveals that an amount of Rs. 2000 was deposited by the petitioner on 19-4-1985. As such the petitioner has complied with the provisions of section 117 of the Representation of People Act. This issue is accordingly decided against respondent No. 1.

Issue No. 4 :

The learned counsel for respondent No. 1 does not press this issue. The copy of the affidavit supplied to respondent No. 1 and produced by respondent No. 1 today is a true copy of the affidavit which was appended by the petitioner with his petition. The affidavit filed with the petition has been duly sworn by the petitioner. Thus issue No. 4 is decided against respondent No. 1.

Issues Nos. 2 and 5 :

The learned counsel for respondent No. 1 states that the petitioner has failed to state the full particulars of the corrupt practices and a full statement of the facts in the petition. He, however, states that he will be objecting at the time of the production of the evidence by the petitioner on this account because the petitioner cannot be allowed to adduce any evidence beyond the pleadings. In these circumstances, the learned counsel for respondent No. 1 does not press issue Nos. 2 and 5 at this stage with liberty to object to the production of evidence or at the time of arguments with respect to the evidence which may be in variance to the pleadings.

In view of the statement of the learned counsel for respondent No. 1, issues Nos. 2 and 5 are decided against respondent No. 1 but respondent No. 1 shall be at liberty to object to the admissibility of any evidence which may be beyond the pleadings at the time of the arguments and he shall also be at liberty to contend at the time of the arguments that the evidence which may be at variance with the pleadings be not read in evidence.

In view of the above findings, all the preliminary issues are accordingly decided. The election petition shall now be tried on merits.

September 27, 1985

(Seal)

Sd/-
V. P. GUPTA, J.

Attested.

Sd/-
Superintendent (J),
High Court of H. P., Shimla.